

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

LARRY ARNOLD YOUNG,

Plaintiff,

v.

**Civil Action No. 2:10cv66
(Judge Bailey)**

**D. THOMPSON, DURANKO,
D. SHAW AND D. YOST,**

Defendants.

**OPINION/REPORT AND RECOMMENDATION
ON THE PLAINTIFF'S MOTION FOR DEFAULT**

The *pro se* plaintiff initiated this case by filing a civil rights complaint on May 24, 2010. [Dckt. 1] On July 14, 2010, the Court conducted a preliminary review of the file and issued an Order to Answer. [Dckt. 14] The defendants thereafter requested permission to extend their time to answer the complaint and to file a consolidated answer. [Dckt. 20] Permission was granted and the defendants answer was initially due on October 18, 2010. [Dckt. 21] On October 18, 2010 and November 17, 2010, the Court again extended the defendants' answer time. [Dckt. 25 & 29] Pursuant to the November 17th Order, the defendants had until November 24, 2010, to answer the complaint.

On November 23, 2010, the plaintiff filed a motion for default judgment. [Dckt. 32] In his motion, the plaintiff seeks a judgment by default against the defendants for the failure to file a timely answer. The plaintiff contends that the defendants' answer was due on or before November 15, 2010.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . and that fact is made to appear by affidavit or otherwise, the Clerk shall enter the party's default." However, "[n]o

judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.” Fed.R.Civ.P. 55(e).

A review of the record shows that the defendants filed a timely response to the complaint on November 24, 2010. [Dckt. 33 & 34] Moreover, the defendants are federal employees and the plaintiff has yet to establish a right to relief by evidence satisfactory to the Court. Thus, the undersigned recommends that the plaintiff’s Motion for Judgment by Default [dckt. 32] be **DENIED**.

Within **fourteen (14) days** after being served with a copy of this Opinion/Report and Recommendation, any party may file with the Clerk, written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable John Preston Bailey, United States District Judge. Failure to timely file objections will result in the waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket, and to any counsel of record via electronic means.

DATED: December 2, 2010.

John S. Kaul
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE